IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 160 of 2005.

Decided on: 13.07.2007.

H.P.S.E.B. and Another. … Petitioners.

Versus

Layak Ram and Another. … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] No.

For the petitioners: **Mr. Shrawan Dogra, Advocate.**

For Respondent No.1: **Mr. V.D. Khidta, Advocate.**

Rajiv Sharma, Judge:

The challenge has been laid to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala, dated 30th October, 2004 in reference No.145/2003.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal:-

> **"Whether the termination of Shri Layak Ram son of Shri Tilak Ram (Worker) by the Executive Engineer, Electrical Division, H.P. State Electricity Board, Anni, Distt. Kullu, H.P. on 20.5.1998, without compliance of Industrial Disputes Act, 1947 is**

Whether reporters of local papers may be allowed to see the judgment? No.

legal? If not, to what relief and compensation Shri Layak Ram is entitled?"

In sequel to the reference, the workman had filed his statement of claim. The employer, i.e. H.P.S.E.B. had also filed detailed reply to the statement of claim filed by the workman.

The workman had pleaded before the Labour Court-cum-Industrial Tribunal that he had completed 240 days at the time of his retrenchment, i.e. on 25th March, 1995 and he was entitled to protection under the provisions as envisaged under Section 25 of the Industrial Disputes Act, 1947. The Labour Court had answered the reference in the affirmative on 30th October, 2004 directing re-instatement of the workman with all consequential benefits.

Mr. Shrawan Dogra had strenuously argued that the award passed by the Labour Court on 30th October, 2004 is not sustainable in the eyes of law. Mr. V.D. Khidta had supported the award dated 30th October, 2004.

I have heard the parties and gone through the record.

Admittedly, the workman had worked with his employer with effect from 1st April, 1994 to 24th March, 1995. He had not been issued notice as contemplated under Section 25(F) of the Industrial Dispute Act, 1947 at the time of his retrenchment on 25th March, 1995. The Labour Court by taking into consideration that the workman had completed 240 days at the time of his retrenchment rightly directed his re-instatement. Mr. Dogra has drawn the attention of this Court to the demand notice dated 15th June, 2002 to which reply was also filed. The reference has been made by the

State Government in the year 2003. The workman was retrenched on 25th March, 1995. Thus, it is evident that the reference has been made after a period of eight years. In view of this delay and laches, the Labour Court while considering the reference should have restricted the relief only to the re-instatement with seniority, but the back wages could not be awarded. The Apex Court has held in **State of Punjab versus Anil Kumar, JT (2007) 7 SC 559** that the Labour Court should not ordinarily grant back wages if the dispute has been raised after a considerable delay.

Accordingly, this petition is partly allowed. The award dated 30th October, 2004 is modified only to the extent that the workman is entitled to be re-instated, but without back wages. The relief as granted with respect to the maintenance of seniority is also up-held. No order as to costs.

July 13, 2007
(sck).

(Rajiv Sharma)
Judge